

1 Wesley H. Avery, Esq. CLS-B (SBN 155724)  
2 Lucy Mavyan, Esq. (SBN 260811)  
2 **LAW OFFICES OF WESLEY H. AVERY, APC**  
3 758 E. Colorado Blvd. # 210  
3 Pasadena CA 91101  
4 Telephone No. (626) 395-7576  
4 FAX No. (661) 430-5467  
5 Attorney for John J. Menchaca, chapter 7 trustee

6 *Fortis est veritas*

7

8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

10

11 In re  
12 FELIX ANIBAL DIAZ and CECILIA GIRON  
13 DIAZ, husband and wife,  
14 Debtors.

15 SSN xxx-xx-9282 and xxx-xx-0987

Case No. 2:18-bk-17781-ER  
Chapter 7

16 **TRUSTEE'S OPPOSITION TO  
"STIPULATION RESOLVING PROOF  
OF CLAIM" FILED AS DOCUMENT # 29  
IN THE BANKRUPTCY CASE AND  
REQUEST FOR HEARING ON SAME [11  
U.S.C. §§ 362(c), 524(c) and 524(k), FRBP  
4008 and LBR 4008-1]**

17 Date: [To be set]  
18 Time: [To be set]  
19 Place: U.S. Courthouse  
Courtroom 1568  
255 E. Temple St.  
Los Angeles, CA 90012

20

21 **TO THE HONORABLE ERNEST M. ROBLES, UNITED STATES BANKRUPTCY JUDGE,**  
22 **DEUTSCHE BANK, THE DEBTORS AND OTHER PARTIES IN INTEREST:**

23 **C**omes now John J. Menchaca, the duly appointed and acting chapter 7 trustee (the  
24 "Trustee") of the above-captioned debtors Felix Anibal Diaz and Cecilia Giron Diaz, husband and  
25 wife (collectively, the "Debtors"), in Case No. 2:18-bk-17781-ER (the "Bankruptcy Case"), who  
26 hereby opposes the "Stipulation Resolving Proof of Claim" filed on December 20, 2018 as document  
27 # 29 (the "Stipulation") in the Bankruptcy Case for any and all of the following reasons.

28 1. Deutsche Bank National Trust Company (the "Bank") has filed Proof of Claim # 2 in

1 the Bankruptcy Case in the unsecured amount of \$179,084.07 based on a pre-petition foreclosure of  
2 a residence (the "POC"); the original note signed by the Debtors was in the amount of only \$80,000  
3 at 10.5% annual interest (the "Note"). See POC at 5. The Parties to the Stipulation are facially the  
4 Debtors and the Bank, but in fact it is signed by neither—just by their respective counsel. See  
5 Stipulation at 3. Through the Stipulation the Bank seeks partial payment of the unsecured Note by  
6 the Debtors in violation of the automatic stay. Id. at 2. Cf. 11 U.S.C. 362(a). For this reason the  
7 Stipulation should not be approved by this Court.

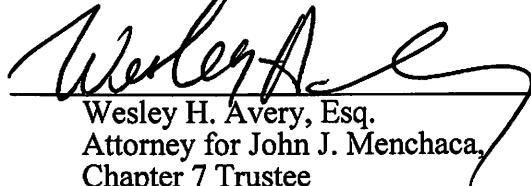
8 2. To the extent the Stipulation is viewed by the Court as a reaffirmation agreement, it:  
9 (i) does not contain the information required by 11 U.S.C. § 524(k) and Fed. R. Bankr. P. 4008(b),  
10 (ii) is untimely under Fed. R. Bankr. P. 4008(a), (iii) violates LBR 4008-1 and (iv) does not comply  
11 with the certifications required by 11 U.S.C. § 524(c). As such, the Stipulation should be denied for  
12 these reasons as well.

13 3. The undersigned left a voicemail message with counsel for the Bank on December 21,  
14 2018 inviting her to contact the undersigned to discuss the Stipulation. The undersigned has not yet  
15 heard back from counsel for the Bank.

16 **WHEREFOR**, the Trustee requests that the Stipulation be disapproved or else a hearing set  
17 to discuss the merits of same.

18 Date: December 27, 2018

LAW OFFICES OF WESLEY H. AVERY, APC

  
Wesley H. Avery, Esq.  
Attorney for John J. Menchaca,  
Chapter 7 Trustee

22  
23  
24  
25  
26  
27  
28

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. I am an employee of Law Offices of Wesley H. Avery, APC, and my business address is 758 E. Colorado Blvd. Ste. 210, Pasadena, CA 91101. A true and correct copy of the foregoing document entitled (specify): Opposition will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) December 27, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Wesley H Avery** wes@averytrustee.com, lucy@averytrustee.com;alexandria@averytrustee.com
- **Daniel K Fujimoto** wdk@wolfffirm.com
- **Michelle R Ghidotti** ECFNotifications@ghidottilaw.com
- **John J Menchaca (TR)** jmenchaca@menchacacpa.com, ca87@ecfcbis.com;igaeta@menchacacpa.com
- **Glenn Park** gsparkfirm@gmail.com, gpfirm@gmail.com
- **United States Trustee (LA)** ustpregion16.la.ecf@usdoj.gov
- **Kristin A Zilberstein** ecfnotifications@ghidottilaw.com

Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (date) December 27, 2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Debtors Felix and Cecilia Diaz, 11119 S. Doty Avenue, Inglewood CA 90303

Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) December 27, 2018, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

12/27/18  
Date

Alexandria Fitzpatrick  
Printed Name

/s/ Alexandria Fitzpatrick  
Signature